

### **REMARKS**

The foregoing amendments and the following remarks respond to the final Office Action dated August 11, 2005.

Claim 1 was pending in the case. Claim 1 is amended. No new matter is added by this amendment. Thus, claim 1 is respectfully submitted for reconsideration by the Examiner.

In the final Office Action, claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,792,687 to Jeng et al. ("Jeng"). Also in the final Office Action, the Examiner addressed Applicant's previous remarks, stating that claim 1 did not recite a structure consistent with the remarks. Specifically, the Examiner stated that "claim 1 does not recite/require 'a stacked structure of a first nitride film, an oxide film and a second nitride film on the conductive layer, the second nitride serves as a barrier layer in a gate patterning process.'"

Applicant has amended claim 1 to recite that the hard mask layer pattern serves as a gate pattern and that "the multi-layered hard mask layer includes a stacked structure of nitride film/oxide film/nitride film serving as a barrier layer during the etching process for a gate pattern." The amendments are fully supported by the specification, such as in the first paragraph of page 8 of the specification.

Jeng fails to teach or suggest a multi-layered hard mask layer, which is formed on a conductive layer, and wherein each layer of the multi-layered hard mask layer is formed of materials different from one another. Rather, Jeng states that gate dielectric layer 12, which is formed over the conductive layers 6 and 10, is preferably formed of silicon oxide or silicon nitride. Therefore, it is respectfully submitted that Jeng fails to teach or suggest the structure recited in Applicant's claim 1 as amended.

Since Jeng fails to teach or suggest the structure recited in claim 1 as amended, Applicant submits that claim 1 is allowable and respectfully requests withdrawal of the rejection under 35 U.S.C. § 102(b).

**CONCLUSION**

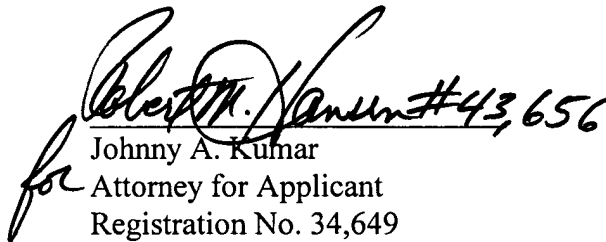
In view of the foregoing amendments and remarks, Applicant respectfully requests that all objections and rejections be withdrawn and that a notice of allowance be forthcoming. The Examiner is invited to contact the undersigned for any reason related to the advancement of this case.

The Commissioner is hereby authorized to charge any additional fees due under 37 C.F.R. § 1.17 or credit any overpayment to Deposit Account 08-1641.

Respectfully submitted,

November 9, 2005

Heller Ehrman LLP  
1717 Rhode Island Avenue N.W.  
Washington, D.C. 20036  
Telephone: (202) 912-2000  
Facsimile: (202) 912-2020

  
Johnny A. Kumar  
Attorney for Applicant  
Registration No. 34,649

Customer No. 26633